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No. 389

In the

Supreme Court of the United States

OCTOBER TERM

JIM SIMMONS,

Petitioner,

v.

UNION TERMINAL COMPANY,

Respondent.

PETITION FOR CERTIORARI

J. O. BEAN,
710 Gulf States Bldg.,
Dallas 1, Texas,
Counsel of Record for Petitioner.

WARLICK LAW, INC.—2263 VALDINA STREET—DALLAS—RI 1-6711

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PETITION FOR CERTIORARI

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Jim Simmons, prays that writ of certiorari issue to review the Judgment of the United States Court of Appeals, for the Fifth Circuit, entered May 9, 1961 (Timely Petition for Rehearing having been denied July 19, 1961).

I. REPORT OF THE OPINION OF THE COURT BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (R. 266-269; printed in Appendix A hereto, infra, page 13) is reported in *290 Federal 2d 453.*

II. GROUNDS ON WHICH JURISDICTION IS INVOKED

The judgment of the United States Court of Appeals for the Fifth Circuit, was entered May 9, 1961, (R. 270; printed in Appendix B hereto, infra, page 17). Rehearing was denied on July 19, 1961 (R. 281; printed in Appendix C hereto, infra., page 21).

The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1254 (1).

III. QUESTIONS PRESENTED

1. Whether a special issue charge, which limited the jury's consideration of employer negligence in failing to provide a safe-place-to-work to the one element of permissive use of its premises, was a full and fair jury trial under the Federal Employers Liability Act (45 U. S. C., Sec. 51, et seq) in compliance with Supreme Court decisions, when the limited submission was specifically pointed out to the trial judge and a charge covering all elements of unsafe-place was requested and refused?

2. Whether it was error to admit, for impeachment purposes, evidence that petitioner had received benefits under the Railroad Sickness and Disability Act?

IV. CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

1. The Constitutional provision involved in this case is the Seventh Amendment to the Constitution of the United States reading as follows:

> "In suits at common law, where the value in controversy shall exceed $20.00, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

2. The statutory provision involved in this case is the Federal Employer's Liability Act, 45 U. S. C., Section 51, et seq., and more specifically that portion of 45 U. S. C., Section 51, which reads as follows:

> "Every common carrier by railroad while engaging in commerce between any of the several States * * * shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce * * * for such injury * * * resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment."

3. Federal Rules of Civil Procedure:

Rule 46 which provides that exceptions are unnecessary and Rule 51 which provides for objections to jury instructions, printed in Appendix D hereto, infra., page 22.